

BOBBY J. STROUP,	)	3:10-cv-00562-HDM-WGC
	)	
Plaintiff,	)	<b>ORDER RE MOTIONS</b>
	)	
vs.	)	
	)	
GREGORY MARTIN, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

## **I. Motion for Extension of Time (Doc # 23)**

## II. Defendant's Motion to Seal (Doc. #18)

The court will now address defendants' Motion to Seal. (Doc. #18.) Defendants have filed a motion for summary judgment (Doc. #17) and seek to maintain medical records filed with the motion (Exhibit B) under seal because they are deemed to be "confidential documents" under certain Nevada Department of Corrections (NDOC) Administrative

1 Regulations. Defendants' motion for summary judgment, if granted, would be a dispositive  
2 motion. Therefore, the motion to seal is governed by the "compelling reasons" standard set  
3 forth in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th. Cir. 2006).

4 In *Kamakana*, the Ninth Circuit noted that "historically, courts have recognized a  
5 general right to inspect and copy public records and documents, including judicial records  
6 and documents." *Id.* at 1178 (internal quotation marks and citation omitted). Certain  
7 documents that have been traditionally kept secret, such as grand jury transcripts and  
8 warrant materials in a pre-indictment investigation, come within an exception to the general  
9 right of public access. *See id.* Otherwise, "a strong presumption in favor of access is the  
10 starting point." *Id.* (internal quotation marks and citation omitted).

11 A motion to seal documents that are not part of the judicial record, such as "private  
12 materials unearthed during discovery," is governed by Federal Rule of Civil Procedure 26(c),  
13 which "provide[s] that a trial court may grant a protective order 'to protect a party or person  
14 from annoyance, embarrassment, oppression, or undue burden or expense.'" *Pintos v. Pacific*  
15 *Creditors Ass'n*, 605 F.3d 665, 678 (9<sup>th</sup> Cir. 2010). As the Ninth Circuit explained, "[t]he  
16 relevant standards for purposes of Rule 26(c) is whether 'good cause' exists to protect th[e]  
17 need for confidentiality." *Id.* (internal quotation marks and citation omitted). The good  
18 cause standard is not limited to discovery and also applies to nondispositive motions. *Id.* at  
19 678.

20 However, a motion to seal documents that are part of the judicial record, or filed in  
21 connection with a dispositive motion, on the other hand, is governed by the higher  
22 "compelling reasons" standard. *Pintos*, 650 F.3d at 678. The "party seeking to seal judicial  
23 records must show that 'compelling reasons supported by specific factual findings...outweigh  
24 the general history of access and the public policies favoring disclosure.'" *Pintos*, 605 F.3d at  
25 678 (quoting *Kamakana*, 447 F.3d at 1178-79). The trial court must weigh relevant actors  
26 including "the public interest in understanding the judicial process and whether disclosure  
27 of the material could result in improper use of the material for scandalous or libelous  
28 purposes or infringement upon trade secrets." *Pintos*, 605 F.3d at 679 n. 6 (internal

1 quotation marks and citation omitted).

2 Applying the “compelling reasons” standard, the court does not find medical records  
3 to be necessarily “confidential” – particularly in an action the subject of which is an alleged  
4 deliberate indifference to serious medical needs. Therefore, that contention would not  
5 establish a “compelling reason” to seal the medical records.

6 However, defendants also rely on Administrative Regulation 639 which prohibits  
7 inmates from possessing copies of medical records in the inmate’s cell. The defendants  
8 suggest if the records are not under seal, the inmate could gain access to medical records in  
9 his cell.<sup>1</sup> The defendants do not describe the rationale for not allowing an inmate to have his  
10 medical records but the court understands the purpose of prohibiting possession of such  
11 materials is based on security concerns, mainly for the inmate’s own safety. In the context  
12 of the instant matter, the court finds that while “compelling reasons” based on security or  
13 safety concerns may exist for sealing Exhibit B, the medical records, the defendants only  
14 barely provide the court with the necessary “factual findings” to support those “compelling  
15 reasons.” Nevertheless, the order of the court is that defendants’ motion (Doc. #18) is  
16 **GRANTED** and Exhibit B shall be filed under seal.

17 In the future, however, counsel for NDOC employees who seek to file exhibits in  
18 dispositive motions under seal shall strive to comply with the dictates of *Kamakana*. In such  
19 matters, counsel shall provide the court with “compelling reasons supported by factual  
20 findings” that will allow the court to determine the defendant(s) have met their burden of  
21 establishing that the presumption in favor of public access has been overcome.

22  
23 **IT IS SO ORDERED.**

24 Dated: November 22, 2011.

25   
26 UNITED STATES MAGISTRATE JUDGE

27  
28 <sup>1</sup> The inmate may send an “Inmate Request” to prison officials to allow him to review the exhibit which  
is maintained “in a safe and secure place outside of the plaintiff’s cell... .” (Doc. #18, p. 2.)